In the course of my testimony I will link the terms of the AT&T interconnection agreement to market needs and to show consistency between those terms and recent action taken by the Commission to pry open the ILEC stranglehold on MTEs so as to afford competitors non-discriminatory access. Moreover, I will identify the differences between Verizon's positions and those of AT&T to show that by adopting Verizon's language, which is in some cases vague and in others overly restrictive, the Commission would provide Verizon the means to severely inhibit, if not halt altogether, reasonable facilities-based competition for customers in MTEs.

Q. WHY ARE MTEs IMPORTANT TO THE DEVELOPMENT OF FACILITIES-BASED COMPETITION?

A. Providing telephone service is capital intensive and therefore involves high fixed costs. While an incumbent LEC has made, and in many instances has recovered and even over-recovered its investment, the same is not true for new market entrants. Furthermore, because a new market entrant does not have a pre-existing and large base of customers already paying for service, it does not have the cash flow to fund investments essential to facility-based market entry. Instead, a new entrant must raise capital through other means such as borrowing or issuing new stock – at present, a particularly daunting undertaking given the financial market's uncertainty with respect to the future of CLECs. Regardless of the method of funding investment, the competitor must generate a cash flow to pay interest charges/dividend and/or to permit further growth necessary to meet investor expectations. Accordingly, a new entrant pursuing a facilities-based market entry will generally seek niches that permit plant and equipment to be deployed in a

manner that quickly provides competitive economies of scale while still having the potential to quickly generate cash. Customers located in MTEs represent one such opportunity.

Q. WHAT DO FACILITIES-BASED COMPETITORS NEED IN ORDER TO GET REASONABLE ACCESS TO MTES?

A. One particularly critical component is reasonable access to on-premises wiring. On-premises wiring is the physical connectivity that permits facilities-based competitors to provide service to customers located in MTEs. Typically this wiring will run from a cross-connection device in the basement of a high-rise or multi-storied building, to individual floors where a second cross-connection device may be located to connect the wiring from the basement (riser) to wiring to individual units on each floor (laterals). Similarly, in garden or campus style MTEs, the on-premises wiring may run from external pedestals (or equivalent cross-connection devices) close to the property line to individual buildings and possibly individual units within those buildings.

Q. WHY IS CLEC ACCESS TO MTES IMPORTANT FOR VIRGINIA CONSUMERS?

A. MTEs represent a unique market opportunity for the establishment of facilities based competition. Verizon must not be permitted to insert inefficient and/or unnecessary terms into interconnection agreements and thereby raise the cost of and/or slow access to MTEs in Virginia. Particularly in a state where the network demarcation is intended to be at the Minimum Point of Entry (MPOE), Verizon should not be permitted to be the self-appointed gatekeeper for MTE access. Were that outcome to result, Verizon would have both the opportunity and the motivation to undermine even the nascent competition that has begun to emerge,

thereby further reducing the prospects of competitive services for Virginia consumers. Unreasonable and/or other discriminatory terms placed upon CLECs will ultimately cause retail customers to pay unnecessarily high rates for local telecommunications services or quite possibly deny consumers the benefits of advanced and innovative service competition.[84]

Q. WHY AND HOW ARE THE ECONOMICS OF ADDRESSING MTEs DIFFERENT FROM THOSE OF THE GENERAL TELECOMMUNICATIONS MARKET?

A. Wireline telecommunications service, at its most basic levels, employs an infrastructure of transmission facilities (loops) connecting retail customers to a telecommunications network comprised of switches and interoffice facilities that interconnect those switches. While each of these elements, in its own right, represents a sizeable investment, the transmission facilities connecting to a customer's premises are currently the most difficult for a competitor to successfully and efficiently self-deploy.[85] The local loop facilities, as provided in most instances, are dedicated to one and only one customer, and used only for a single revenue generating call at any one particular time.[86]

In the case of MTEs, the situation is somewhat different. An MTE represents a high concentration of customers in a very limited geographic footprint such that the serving carrier theoretically has the opportunity both to

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84 *See* In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket 99-217, FCC 00-366 ("Building Access Order"), at ¶ 14.

85 *See* UNE Remand Order at ¶ 183.

86 For non-MTEs, ADSL is one notable exception. That technology permits voice communications, on a properly conditioned local loop, simultaneously with high-speed

better use loops (i.e., share the costs) and to engage in more cost-effective, focused marketing. By deploying multiplexing and other transmission functionality on the facility between the MTE and the service provider's network (i.e., the first point of switching) the investment in the facility connecting the premises to the carrier's network can be shared, thereby significantly improving the economics of the capital invested for market entry. Moreover, because the revenue opportunity is relatively sizeable and, in theory, immediately addressable, capital funding is more likely to be available, and particularly at better rates. When a carrier is also in a position to offer other non-telecommunications services, such as video entertainment and high-speed Internet access that simultaneously shares the facility with voice service, the economics are potentially even better. By focusing on a small and consolidated customer base, marketing can be more targeted and thereby more productive and cost-effective. As attractive a market as MTEs may be in theory, however, the potential will not be realized unless competitive carriers can obtain prompt, efficient and cost-effective access to retail customers in MTEs.

Q. ARE MANY CUSTOMERS LOCATED IN MTES?

A. According to the most recently published (1990) U.S. Census data, 29.8% of households nationwide are in MTEs. Currently there are about 105 million residential households in the U.S., which means that more than 30 million households are located in MTEs. The Virginia figures are only slightly different –

Internet access. ADSL services have only recently been widely offered in the market place.

according to the same census data, 29.0%, or in excess of 500,000, of the state's residential households are located in MTEs. Significantly, the MTE market is itself highly concentrated, with approximately 54% of the Virginia MTE households being located of complexes of 10 or more housing units. Thus, the customers in MTEs in Virginia are both numerous and highly concentrated. There is little doubt, therefore, that Verizon will be vigilant in guarding access to these customers.

Q. IS FACILITIES-BASED COMPETITION FOR CUSTOMERS IN MTES DEVELOPING AS EXPECTED?

A. No. Despite the fact that the MTE market appears attractive and the economics for facilities-based service to MTEs superior compared to serving other potential configurations, MTEs are not being addressed at the pace and scope expected. The Commission has noted that customers in MTEs are ripe for competition, but that competition has been slow to develop.[87] Prominent among the reasons for the slow development of competition is the fact that the ILECs have both the ability and the incentive to discriminate.[88]

Q. HAVE ILECS SLOWED COMPETITIVE ENTRY, PARTICULARLY WITH RESPECT TO MTEs?

A. Without a doubt, ILECs including Verizon, have frustrated MTE competition by using control (or the ambiguity regarding control) of facilities necessary for MTE access, including on-premise wire, to deny or impede access by competitors. Through the lengthy process of interconnection agreement negotiations, ILECs

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87 *See* Building Access Order at ¶ 23.

88 *Id.* at ¶ 14.

have also sought to impose operational procedures that largely serve only to increase their competitors' costs and/or cause needless delays. Even in jurisdictions, such as Virginia, where the network demarcation is located at the MPOE, which should make access to MTEs relatively simple, Verizon has been an obstacle. If Verizon truly neither owns nor controls on-premise wiring, once a carrier establishes a facility presence at the MTE and a retail customer elects to take service with that carrier, Verizon should play no part in the service delivery.

Q. DOES VERIZON TAKE SUCH A "HANDS OFF" APPROACH TO MTE ACCESS?

A. No. Verizon seeks to impose intrusive and limiting conditions on MTE access – conditions involving some of the very practices that the Commission has identified as abuses limiting competitive access. For example, Verizon seeks to insert its own technicians into the process of re-terminating premise wiring onto a CLEC's network although the Building Access Order found the practice unacceptable:

> The record further indicates that incumbent LECs are using their control over on-premises wiring to frustrate competitive access to multi-tenant buildings. Competitive LECs report that they have encountered difficulties with incumbents when attempting to arrange for interconnection or lease unbundled network elements. For example, competitive LECs report that incumbents may fail to timely provide non-proprietary information in their possession, *require the presence of their own technicians to supervise competitive LEC wiring*, and take unreasonable amounts of time in scheduling such visits. In addition competitive LECs contend that incumbent LECs often require network configurations, which may be disadvantageous for competitors.[89]

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89 *Id.* at 19 (Emphasis added).

Q. HOW DOES VERIZON FRUSTRATE CLEC ACCESS TO MTES?

A. Verizon seeks to sidestep the entire issue by claiming that it does not own MTE on-premises wiring.[90] Yet its data responses acknowledge that it does own or control wiring in MTEs built prior to May 1, 1986.[91] For those properties, however, it asserts that it does not maintain records identifying the MTEs or the on-premises wiring that it controls, thus making it nearly impossible for a CLEC to gain access to those properties. And in those cases where the building owner wants to move the demarcation point to the MPOE for a building constructed prior to May 1, 1986, so that a CLEC could gain access to the property, Verizon has made it very clear that it intends to charge the building owner to make the change.[92]

Moreover, in claiming that it has no ownership or control of on-premise wiring, Verizon seems to disingenuously rely on an order of the Virginia State Corporation Commission regarding tariff revisions "governing termination of its network wiring of ***three or more lines*** in multi-occupancy, multi-story buildings, malls, or campuses constructed prior to May 1, 1986."[93] As the Commission has already recognized in the consideration of the unbundling of switching, individual residential customers rarely have 3 or more lines. Taken literally, this order may not address a substantial base of MTE customers in Virginia.

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90 *See, e.g.*, Verizon Response to Unresolved Issues, at 104 (Issue I-11).

91 *See* Verizon Response to AT&T Data Request 2-1.

92 *See* Verizon Response to AT&T Data Request 2-3.

93 Order Authorizing Tariff to Take Effect, Case No PUC920026, State Corporation Commission (Aug. 3, 1992). (Emphasis added).

Finally, if Verizon truly did not own or control any on-premises wiring, there would be no basis to express a concern that it would need to "assure it can track and charge AT&T for the use for the subloop element"[94] and there would be no need for language related to maintenance.[95]

Q. HOW ELSE DOES VERIZON LIMIT OPPORTUNITIES TO COMPETE FOR MTE CUSTOMERS?

A. Verizon has no established process supporting CLEC access to on-premises wiring. For example:

1. Verizon has no ability to readily determine ownership status at MTEs[96] nor does it have a process for responding to such requests.[97]
2. Verizon evidently keeps no records relating to whether or not the demarc has been moved at the building owner's request.[98]
3. Verizon has no process for determining the costs of unbundling on-premises wiring.[99]
4. It has no training in place to instruct its employees or agents regarding access to on-premises wiring.[100]
5. Verizon does not routinely inventory its on-premises wiring nor has it performed any validation of the accuracy of any records that it does maintain.[101]
6. It acknowledges it has no practice for uniquely identifying the on-premises wiring with particular cross-connection to its network.[102]

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94 *See* Verizon Response to Unresolved Issues, at 102, Issue III-11.

95 *See* Verizon proposed contract terms, § 11.2.16.7.

96 *See* Verizon Response to AT&T Data Request 2-1.

97 *See* Verizon Response to AT&T Data Request 2-2.

98 *See* Verizon Response to AT&T Data Request 2-4.

99 *See* Verizon Responses to AT&T Data Requests 2-8, 2-9, and 2-10.

100 *See* Verizon Response to AT&T Data Request 2-11.

101 *See* Verizon Response to AT&T Data Request 2-26.

Q. HOW DOES A FACILITIES-BASED COMPETITOR GAIN ACCESS TO AN MTE WHERE THE ILEC DOES NOT OWN OR CONTROL THE ON-PREMISES WIRING?

A. When a competitor (or for that matter the incumbent) brings its facility to an MTE, it will terminate the outside plant at an electrically protected terminating device that provides for cross-connection to on-premises wiring. With such electrical protection, the carrier's network and the on-premise wiring are both protected from risks of lightning and shorts from fallen aerial wires and the like. This terminating device, regardless of the name assigned, permits the cross-connection of the on-premises wiring and the service provider's network occurs using copper pairs. The outside plant is generally wired on a connecting block (terminals) separate and distinct from a connecting block (or terminals) where the on-premise wiring terminates. A separate cross-connecting wire then connects the appropriate terminals of the outside plant pair with the on-premise wiring pair necessary to provide service.

Regardless of whether the on-premises wiring is owned or controlled by the incumbent LEC, or by the building owner, access to it is essential for a facilities based competitor to provide telecommunications services.

Q. WHAT PORTION OF WIRING ON PRIVATE PROPERTY CONSTITUES THE ON-PREMISES WIRING ELEMENT?

A. The "on premises wiring element" is the portion of the facility between the MPOE and the demarcation point. The MPOE is "either the closest practicable point to where the wiring crosses the property line or the closet practicable point

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102 *See* Verizon Initial and Supplemental Response to AT&T Data Request 2-28 as well as its response to AT&T Data Requests 6-30 and 6.31.

to where the wiring enters a building" with the choice between the two locations determined by the telephone company's reasonable and non-discriminatory practices.[103] The demarcation point (or demarc) is the point where ownership and control of the physical wiring changes from that of the telephone company to that of either the building owner or the customer of the telephone company. The demarc, however, is not in a standardized location. Since August 13, 1990, for wiring installed or subjected to major additions or rearrangements, if the telephone company did not elect to place the demarc at the MPOE, the building owner had the option of specifying a single demarc for all customers or individual demarcs for all customers, with the limitation that individual demarcs could not be deeper into a customer unit than about 12 inches from where the wiring enters the premise.[104] Prior to August 13, 1990, the placement of the demarc was subject to the telephone company's reasonable and non-discriminatory practice, provided that individual demarcs could not be deeper into a customer unit than about 12 inches from where the wiring enters the premise.[105]

Q. WHERE MIGHT CARRIERS ROUTINELY GAIN ACCESS TO ON-PREMISE WIRING OR PRIVIATELY OWNED INSIDE WIRE?

A. Wherever the demarc is located, a cross connection device is typically deployed to physically connect the on-premise wiring/inside wiring to the carrier's facility. Frequently there is an MPOE terminal that provides reasonable access.

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103 *See* Part 68.3.

104 *See* Part 68.3(2).

105 *See* Part 68.3(1).

Q. CAN A CARRIER GENERALLY ACCESS THE RETAIL CUSTOMER'S WIRING AT THIS POINT?

A. Yes, because the premise wiring terminals and the outside plant terminals are usually physically separated so access at the MPOE terminal is generally readily available. In many, but not all cases, the terminals upon which the carrier's facilities terminate are protected from unauthorized access in some manner. It is Verizon's policy to secure the network side of the NID whether Verizon owns or controls the inside wiring or not. In fact Verizon's practice for limiting access to its network in MTE's depends on the situation and customer, with access either limited by separate rooms, cabinets or locks.[106] On the other hand, the terminals upon which the building owner's/retail customer's wiring terminates generally are not secured in a way that prohibits competitive supply of inside wire or CLEC. access to on-premise wiring. Many incumbent LECs refer to the MPOE terminal as a NID. What the cross-connecting device is called is not critical unless, of course, the use of the term NID is intended to permit the incumbent to levy charges for the NID functionality.

Q. HOW DOES VERIZON REFER TO THE CROSS-CONNECTION DEVICE WHERE IT BELIEVES ACCESS WILL TYPICALLY OCCUR?

A. Verizon, in fact, asserts that AT&T must access on-premises wiring through its NID.[107] Whatever the meaning Verizon elects to assign to the term "NID", in this case, it should not result in AT&T ordering or paying for a NID UNE. Verizon acknowledges that, when the wiring is owned by the building owner,

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106 *See* Verizon responses to AT&T Data Requests 2-16 and 6-29.

107 *See* Verizon response to AT&T Data Request 2-7.

"Verizon Virginia deploys the NID, at which Verizon Virginia terminates its loop."[108] Moreover, despite the fact that Verizon asserts it recovers the costs "through the appropriate retail or wholesale rates",[109] Verizon never says it directly charges the building owner and has yet to answer AT&T's other Data Requests probing the tariff authority for application of such charges. As discussed subsequently in my testimony, if the cross-connection device encompasses the NID UNE functionality, then AT&T will not be using the NID UNE for MTE access (except in very unusual circumstances).

Q. HOW ELSE DOES VERIZON RESTRICT ACCESS TO SUBLOOPS IN WAYS THAT IMPACT MTE ACCESS?

A. Verizon maintains that subloop unbundling should be governed by collocation provisions or the submissions of Bona Fide Requests.[110] Although § 51.319(a)(2)(D) of the Commission's Rules do envision subloop access to be generally subject to collocation rules, those rules are not exclusively applicable and are especially inapplicable in the narrow sense of on-premises wiring. Verizon, however, sees no alternative for access to UNEs other than through collocation arrangements.[111]

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108 *See* Verizon response to AT&T Data Request 2-12.

109 *See* Verizon response to AT&T Data Request 2-12 a.

110 *See* Verizon Response to Unresolved Issues, at 86, Issue III-8. *See also* Verizon-VA's Supplemental Issues List, Issue 161, page 73, Case No. PUC 000282, Nov. 14, 2000.

111 *See* Verizon response to AT&T Data Request 3-2.

Q. WHY ARE COLLOCATION CONSIDERATIONS INAPPLICABLE IN THE NARROW SENSE OF MTE ACCESS?

A. Section 51.5 of the Rules defines collocation as an offering that permits a CLEC to place its qualifying equipment "within or upon an incumbent LEC's premises." That same section of the Rules goes on to say: "Premises refers to an incumbent LEC's central office and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that houses its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures." None of these previous provisions are even remotely applicable to the MTE. This conclusion is further validated by the fact that the building owner generally receives no compensation for the spaces employed by the incumbent LEC cross-connection device.[112]

Q. WHAT ARE SOME OF THE OTHER WAYS THAT VERIZON MAY INHIBIT AT&T'S ABILITY TO SERVE CUSTOMERS IN VIRGINIA MTES?

A. Among the provisions that I believe both inhibit competition and are contrary to recent FCC rulings, are the following:

(1) Verizon asserts that under its limited interpretation of what is necessary to provide access to on-premise wiring, it can require CLEC access be only thorough the cross-connection terminal deployed by Verizon.[113]

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112 *See* Verizon Response to AT&T Data Request 2-13.

113 *See, e.g.,* Verizon Response to AT&T Data Request 2-7: "Verizon Virginia does take the position that the CLEC must access on-premises wiring through the customer side of the NID." It is interesting to note that Verizon refused to respond to AT&T Discovery Request 2-6, regarding whether or not Verizon asserted sole responsibility to determine where technically feasible points of interconnection existed, claiming "that this request

(2) Despite Verizon's claims that it neither owns nor controls the on-premises wire at MTEs in Virginia and that its network ends at the MPOE, it goes on to proscribe how a CLEC may connect to the wiring Verizon claims neither to own or control.

(3) Out of asserted, but vaguely stated, concerns for customer service, security, fraud, union issues, accountability, and liability Verizon suggests, and proposes contract terms to require, that only Verizon should be authorized to connect on-premises wiring to a CLEC's network.[114] Yet when specifically asked in discovery to disclose the basis for the concern, Verizon was unable to provide a timely reply.[115]

(4) Finally, Verizon insists direct access to inside wire is not possible because Verizon could not track and charge CLECs for use of the subloop element.[116] Yet if Verizon neither owns nor controls the on-premises wiring there is nothing for Verizon to track or charge for. (Even if there were, the procedures established must be consistent with the investment in question – on-premises wiring generally involves investment related costs of little more than 25 cents per month. An elaborate order, tracking and billing system would certainly not be warranted.)

Q. HOW SHOULD CLECS BE ABLE TO ACCESS ON-PREMISES WIRING OF MTES?

A. In theory, even when the demarc and MPOE are not in identical locations, there should be little standing in the way of a competitor's access to the on-premises wiring of MTEs. The cross-connection of the on-premise wiring can be achieved simply by lifting the wiring from the customer side of the existing cross-connect device and extending it to the cross-connect device of the new service provider.

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calls for a legal conclusion and is, therefore, improper." Yet in the very next response Verizon says "the CLEC ***must*** access on-premises wiring through the customer side of the NID." (emphasis added). Use of the word "must" clearly indicates Verizon will not permit interconnection at any technically feasible point that the CLEC desires.

114 *See* Verizon Response to Unresolved Issues, at 102, Issue III-11: "by allowing direct access, Verizon loses it ability to assure it can track and charge AT&T for the use of the subloop element." *See also id.* at 103.

115 *See* Verizon Responses to AT&T Data Requests 3-21 & 3-22.

This presents no issue of potential network harm to the prior service provider even when a small segment of the wiring may be owned by the ILEC (*i.e.*, between the terminal and the demarc) and Verizon admits as much.[117] The prior service provider should not be exerting any limitation on the access to the wiring on the customer side of the cross-connection device. Indeed, Verizon Virginia claims that it asserts no such control.[118]

Q. HOW ELSE DOES VERIZON ATTEMPT TO EXERT SIGNIFICANT CONTROL WITH RESPECT TO MTE ACCESS?

A. Verizon makes unclear statements that indicate it may exert significant control over – and generate unjustified additional expense for – such access, particularly when Verizon may own or control the on-premises wiring. For example, "Verizon insists that its own employees be present when all cross-connections and other work are performed on any portion of the network Verizon owns or controls."[119] Elsewhere Verizon says: "[t]o the extent WorldCom seeks direct access to perform its own cross-connections, Verizon adamantly opposes this proposal."[120] Such intervention is unprecedented.

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116 *See* Verizon Response to Unresolved Issues, at 102, Issue III-11, *supra* note 30.

117 *See* Verizon Response to AT&T Data Request 2-29.

118 *See* Verizon Responses AT&T Data Requests 2-12(b) & (c) and 2-14.

119 *See* Verizon Reply to WorldCom Issue IV-29, page 129, and Verizon Response to Unresolved AT&T issue III-11, page 103.

120 *See* Verizon Reply to WorldCom, page 129.

Q. WHY IS VERIZON'S REQUIREMENT THAT IT PERFORM ALL CROSS-CONNECTIONS TO PREMISE WIRING UNREASONABLE?

A. The ability of a carrier to perform its own cross-connection has been found technically feasible by other state commissions[121] and has been permitted by the Commission in the UNE Remand (e.g., "an incumbent LEC must permit requesting carriers to connect its own loop facilities to the inside wire of the premises through the incumbent LEC's network interface device, or at any other technically feasible point, to gain access to the inside wire subloop network element."[122]

Q. ON WHAT BASIS DOES VERIZON JUSTIFY ITS DEMAND THAT, REGARDLESS OF WIRING OWNERSHIP, VERIZON CONNECT CARRIERS TO ON-PREMISES WIRING?

A. The only justification for Verizon's ostensible need for intrusion is, as I've testified earlier, its vaguely stated concern regarding "customer service, security, fraud, union, accountability and liability concerns."[123] Despite these concerns, and the impression that they are serious concerns of Verizon, Verizon was unable to provide any specifics based on a trial in another state.[124] This is not surprising because even Verizon acknowledges that once the wiring is re-terminated to the competitor's outside plant, access to Verizon's network no longer exists (in the

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121 *See, e.g.,* MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc, Dockets 10418-U and 10135-U; see also NYPSC decision in House and Riser Trial, Case 00-C-1931.

122 UNE Remand Order at 237, 240.

123 Verizon Response to Unresolved AT&T Issue III-11, page 103.

124 *See* Verizon Response to AT&T Data Request 3-21.

case of privately owned wiring) and is limited to the on-premises wiring when Verizon exerts ownership.[125]

Q. DID VERIZON RAISE ITS CONCERNS WITH THE COMMISSION OVERSEEING THE TRIAL IN THE OTHER STATE?

A. Yes, and the Commission concluded that they "did not occur in any systematic fashion, had no material impact and were generally correctable."[126] The Commission concluded that "[t]he current method of providing cross connections to CLECs in Multi-tenant buildings is costly to both parties, and limits CLECs' flexibility in scheduling service provision to customers. We conclude that direct access to house and riser cable owned by other carriers will reduce costs and time associated with providing certain types of competitive facilities-based telecommunications services, thereby enhancing competition."[127]

Q. WHY ARE CONTRACT PROVISIONS REGARDING ACCESS TO MTE ON-PREMISE WIRING NECESSARY?

A. Contract terms governing access to MTEs are necessary to provide unambiguous rights for AT&T to access MTE wiring, regardless of whether the on-premises wiring is owned or controlled by Verizon. The policy statements and intent of recent Commission orders must be converted to detailed contractual provisions that faithfully implement the pro-competitive intent of these Orders and minimize the likelihood of Verizon engaging in semantic guerilla warfare.

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125 *See* Verizon Response to AT&T Data Request 3-22.

126 *See* NYPSC Case No. 00-C-1931 – In the Matter of Staff's Proposal to Examine the Issues Concerning the Cross-Connection of House and Riser Cables, at 6 (May 23, 2001).

127 *Id.* at 8-9.

Q. WHAT ARE THE CRITICAL PROVISIONS THAT AT&T SEEKS TO MEMORIALIZE IN THE TERMS THAT IT HAS PROPOSED?

A. The language submitted by AT&T reflects reasonable definitions and supporting general provisions necessary to permit faithful application of the access provisions. For example, connection of on-premises wiring to the distribution subloop element will be permitted and supported.[128] Obviously, the distribution sub loop element is of little value if, just as is the case with the local loop, it does not include on-premises wiring. The AT&T contract terms also define the on-premise wiring in terms consistent with the FCC UNE Remand (*i.e.,* wiring between two accessible terminals that is entirely contained on a single property.[129] AT&T's terms also provide for a rate structure that reflects a further subdivision of the on-premise UNE.[130] A substantial amount of the language is dedicated to how the on-premises wiring is accessed during and after initial cross-connection occurs. For the most part, the primary purpose is to define available options that are consistent with the UNE Remand provision for MTE access. The AT&T language also makes clear that AT&T, not Verizon, selects among the available technically feasible points of access to on-premises wiring.[131] The language defines how the wiring will be accessed in physical terms, and allows AT&T, to the extent available, the option to utilize spare terminal capacity on the

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128 *See* § 4.6.1.1 of AT&T's proposed schedule 11.2.14.

129 *See id.,* § 4.6.1.2.

130 *See id.,* § 4.6.1.3.

131 *See id.,* § 4.6.2.1 as required by 47 CFR 51.319(a)(2)(E) "This obligation [to provide a SPOI] is in addition to the incumbent LEC's obligation to provide nondiscriminatory access to subloops at any technically feasible point."

ILEC cross-connection device as permitted via acquisition of a stand alone NID.[132] Finally, when wiring is privately owned, Verizon must allow the property owner (or the connecting carrier) the unrestricted right, at no charge, to modify wiring that terminates on the building side of the cross-connection terminals, and cannot require the building owner (or the connecting carrier) to pay compensation for the use of the NID.[133]

Q. WHAT OTHER PROVISIONS DOES AT&T'S PROPOSAL INCLUDE?

A. It allows AT&T the option of deploying its own terminal device whether in proximity of the ILEC device[134] or within a physical enclosure deployed by the ILEC if space exists.[135] It provides for direct connection of the terminal device of AT&T to the ILEC cross-connection device.[136] It expressly permits AT&T to perform the work of re-terminating on-premises wiring to its own loop facilities (§ 4.6.2.6 as provided in the First Report & Order and reflected in 51.319(b)). It specifies efficient exchange of information for billing that allows Verizon to recover its "costs" while not imposing costly ordering procedures for a minimal cost element that is the only one required by AT&T to serve the premises.[137]

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132 *See id.*, § 4.6.2.2.a.

133 *See* Verizon Amended Reply to AT&T Data Request 2-12 b.

134 *See* § 4.6.2.2.b of AT&T's proposed schedule 11.2.14.

135 *See id.*, § 4.6.2.3.

136 *See id.*, § 4.6.2.6, as provided in the First Report & Order at 392.

137 *See id.*, § 4.6.2.7.

Q. DOES AT&T HAVE A CONCERN ABOUT HOW ON-PREMISE WIRING MIGHT BE ORDERED?

A. AT&T proposes that pair-by-pair ordering not be mandated. Expensive ordering processes (compared to the element employed) and needlessly repetitive procedures are unwarranted, especially when Verizon has already acknowledged that it does not retain records relating to MTE wiring[138] nor are the records essential to maintenance support[139] which would only be referred to AT&T. Indeed, where service is provided using privately owned wiring, Verizon acknowledges that it "retains no information that would allow it to uniquely identify and associate on-premises wiring pairs for a specific retain customer unit with specific terminal appearances on a terminal block and how that pair and terminal appearance are associated with cable pair assignments and terminal appearances of Verizon outside plant that is used to provide service to the retail customer."[140] Because Verizon has no need to maintain an association between its plant and on-premises wiring, it does not obligate the building owner, in the case of private wiring, to either report any changes to the terminations or to compensate Verizon for use of the NID.[141] AT&T does not object to providing information required for billing (where the on-premise wiring is owned by Verizon) on a periodic basis. Fulfilling this obligation, however, does not require pair-by-pair ordering.

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138 *See* Verizon Response to AT&T Data Request 2-26.

139 *See* Verizon Response to AT&T Data Request 2-17.

140 *See* Verizon Response to AT&T Data Request 2-28.

141 *See* Amended Response to AT&T Data Request 2-12 c.

Q. WHAT OTHER KEY PROVISIONS ARE REFLECTED IN AT&T'S LANGUAGE?

A. AT&T's terms also permit service to be delivered by AT&T even when uncertainty exists with respect to ownership of on-premises wiring.[142] This provision is particularly important given Verizon's apparent lack of any set of records to determine wiring ownership and its lack of any process to determine ownership.[143]

Q. ARE THERE ANY PROVISIONS IN AT&T'S PROPOSED TERMS THAT WOULD FACILTATE RESOLUTION OF QUESTIONS OF OWNERSHIP OR CONTROL OF ON-PREMISES WIRING?

A. Yes. AT&T's language affords a 10 day advance notice to permit Verizon to determine ownership.[144] Such an interval is consistent with provisions in the Building Access Order when the building owner seeks such a determination.[145] On the other hand, the language allows for only 1 day notice when another competitor is already servicing the same building[146] for the completely rational reason that Verizon (1) should already have made the determination of ownership for the other competitor(s) or (2) would be discriminating against AT&T if it made AT&T wait for such a determination when the carrier already serving the building had not been subjected to the same delay. AT&T's draft also provides a clear obligation for facility labeling, where Verizon owns the wiring, both to

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142 *See* § 4.6.2.8.

143 *See* Verizon Responses to AT&T Data Requests 2-1 & 2-2).

144 *See* § 4.6.2.8.1.

145 *See* Building Access Order at 56, finding a 10 day response interval to be reasonable.

146 *See* § 4.6.2.8.1.

permit exchange of facility use information and to avoid potential service disruptions.[147] This requires that Verizon tag its active pairs so that AT&T can minimize and already small likelihood of inadvertent service affecting failures.[148] It also requires that Verizon verify that no active service exist on any AT&T tagged wiring before it make any changes to the wiring configuration.[149] And entirely appropriately, the contract contains terms to assure that Verizon's failure to act on labeling its facilities does not become a tool to delay AT&T's providing service to an MTE.

Q. HOW DOES IT ACCOMPLISH THAT?

A. After allowing a 30 day grace period for Verizon to institute appropriate labeling, the contract provides that AT&T may begin service to the building regardless of whether or not Verizon has acted.[150] It also allows for recovery of assignment information, when Verizon is late in instituting labeling but holds Verizon responsible for AT&T's costs of recouping information that would ordinarily be capture as part of the initial service provisioning process. Furthermore, to provide an incentive for prompt action on the part of Verizon, the language forecloses any

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147 *See* § 4.6.2.8.2.

148 *See* §4.6.2.8.3. There is no reason to believe that AT&T's technician would cause any more service interruptions than are caused by activities of commercial inside wire contractors. Indeed, Verizon has acknowledged that it has no basis to believe or claim that trouble rates are different at MTEs where it provides the on-premise wiring than at those MTE locations where it does not (See Verizon response to AT&T Data Request 2-20).

149 *Id.*

150 *See* § 4.6.2.8.4.

retroactive charges for use of unlabeled facilities.[151] This is appropriate because only Verizon derives a benefit from exchange of detailed assignment information.[152] Finally, since Verizon employs an automated procedure for assigning loop facilities and dispatching provisioning technicians, the contract obligates Verizon to block automated assignment to facilities where AT&T has submitted facility utilization information described earlier.[153] This provision simply assures that Verizon will not inadvertently direct its technician to use a facility employed by AT&T.

Q. ARE THERE OTHER TERMS RELATING TO SITUATIONS OF AMBIGUITY OF OWNERSHIP OR CONTROL?

A. Yes. In light of possible disputes between Verizon and the building owner regarding ownership of the on-premises wiring, the contract requires that Verizon hold AT&T harmless when it has made payments to Verizon in good faith.[154]

Q. IS RESERVATION OF ON-PREMISES WIRING ADDRESSED IN THE AT&T LANGUAGE?

A. Yes, when the customer transfers service from Verizon to AT&T, it is unreasonable to expect that AT&T incur the expense of needlessly transferring the customer inside wire to different on-premises wiring. This practice, whereby Verizon reserves the first pair to a unit, is foreclosed[155] as well it should be, since it would be discriminatory to allow Verizon, and only Verizon, to provide

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151 *See* § 4.6.2.8.5.

152 In fact if Verizon acknowledges that this detail has little value to its operations, AT&T would be agreeable to revising this language related to facility labeling.

153 *See* § 4.6.2.8.6.

154 *See* § 4.6.2.9.

virtually instantaneous service provisioning by "disconnecting" the service in the Central Office but leaving the MTE connection in place.[156] In all other instances, reservation of spare pairs should not be permitted except to the extent the pair(s) are required for a bona fide retail customer request for service.

Q. DOES THE DRAFT CONTRACT CONTAIN ANY MAINTENANCE PRACTICES?

A. Yes, it does. For example, it requires, when AT&T employs on-premises wiring supplied by Verizon, that Verizon provide non-discriminatory maintenance support[157] as required by the Commission.[158] It also obligates Verizon to refer to AT&T any troubles that it receives from AT&T customers located within an MTE[159] – a practice that Verizon cannot reasonably object to because it professes to already do this.[160] And in the cases where AT&T processes the trouble report and determines that a dispatch is necessary and Verizon owns or controls the on-premise wiring, the contract language obligates Verizon to respond to the request but forecloses application of a dispatch charge by Verizon when AT&T has taken reasonable steps to first validate that the trouble source is not resident in the AT&T plant and equipment.[161] Frequently, troubles are difficult to isolate to on-premises wiring and replicate and, as a result, unrestricted application of the

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155 *See* § 4.6.2.10.

156 *See* Verizon Response to AT&T Data Request 2-23.

157 *See* § 4.6.2.11.

158 *See, e.g.*, First Report & Order at 316.

159 *See* § 4.6.2.11.1.

160 *See* Verizon Response to AT&T Data Request 2-17.

161 *See* § 4.6.2.11.2.

dispatch charge would be unreasonable. Additionally, so as to prevent finger pointing that only works to the detriment of the customer and to ensure that Verizon promptly and effectively deals with referred on-premises wiring troubles, the contract reserves the right for AT&T to (1) move its service to a different and spare facility or (2) to run its own wiring to the customer.[162] Note that the language must be updated to reflect the wait period for AT&T to exercise this option. Although Verizon simply deleted the language rather than supplying a proposed interval, AT&T remains willing to negotiate the period to be adopted.

Q. HOW DOES THE AT&T PROPOSED LANGUAGE ADDRESS THE DELIVERY OF A SINGLE POINT OF INTERCONNECTION?

A. It defines the Single Point of Interconnection ("SPOI")[163] in terms consistent with the UNE Remand Order.[164] It establishes (1) that Verizon has the obligations to provide the SPOI, (2) that AT&T may not be restricted with respect to its access to the SPOI, and (3) that AT&T specifically does not waive its right to use other technically feasible points of accessing on-premises wiring as permitted.[165] It requires that Verizon provide the requested SPOI within 60 days and that, once established, Verizon access its customers in the same MTE through the same device.[166] This assures that the SPOI will be efficiently sized, that once installed all customers will be accessible by any competitor, and that Verizon will have less

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162 *See* § 4.6.2.11.3.

163 *See* § 4.6.3.1.

164 *UNE Remand Order* at 226.

165 *See* § 4.6.3.2; *UNE Remand Order* at 226; *see also* 47 CFR 51.319(a)(2)(E).

166 *See* § 4.6.3.3.

of an opportunity to engage in discriminatory practices.[167] It also provides that Verizon may only recover its TELRIC costs[168] and that users of the SPOI (including Verizon) incur an equitable and proportionate share of the costs.[169] This provision is particularly important given Verizon's expressed intent to apply other than TELRIC-based charges.[170]

Q. HOW DOES THE PROPOSED AT&T LANGUAGE ADDRESS THE ON-GOING USE OF A SPOI?

A. The AT&T language also (1) clarifies that SPOI disputes will be handled under the general ADR provisions of the contract.[171] (2) provides, when a SPOI is established after AT&T begins service to a particular MTE, that it is AT&T's option whether it use the SPOI[172] and that should it elect to use the SPOI AT&T may opt to do the work (as provided by CFR 47 51.319(b)) or request that Verizon perform the work on a time and material basis[173] and (3) reasonably requires that Verizon notify AT&T when the building owner undertakes negotiations to establish a SPOI (i.e., move the demarc to the MPOE) so that

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167 *See* Building Access Order at 55, (which provides that the building owner and ILEC have 45 days to negotiate deployment of the SPOI, allowing another 15 days for deployment is not unreasonable).

168 Any inadequacy of embedded cost recovery through TELRIC is not a factor as this will be new installation of new equipment and facilities.

169 *See* § 4.6.3.4.

170 *See* Verizon Response to AT&T Issue III-11, at 103, directly disregarding the Commission's Rules; *see also* CFR 47 51.319(a)(2)(E).

171 *See* § 4.6.3.5.

172 *See* CFR 47 51.319(a)(2)(E).

173 *See* § 4.6.3.6.

AT&T may evaluate its options in a timely manner.[174] In this respect, it sets forth AT&T options, rights and notification requirement, consistent with the treatment of the SPOI, when Verizon and a building owner determine to move the demarcation point but do not necessarily move it to the MPOE and/or establish a SPOI.[175] Finally, it incorporates a general statement regarding access to Verizon's records.[176] In sum, AT&T's language is comprehensive, reasonable and faithfully adheres to both the letter and spirit of recent Commission orders intended to open MTEs to competition.

Q. HOW DO VERIZON'S CONTRACT TERMS COMPARE TO AT&T'S?

A. It is not entirely clear what version of language AT&T should address. The language upon which AT&T based its April 24th filing is not the same as the electronic version of the language Verizon provided to AT&T on July 19th. I will start by addressing the deficiencies of the Verizon language as reflected in the April 24th material. In both instances, however, Verizon's alternative language is vague, incomplete and, in some cases anti-competitive. It should be rejected in its entirety as it establishes Verizon as the gate keeper of MTE access and simply inflates competitor costs to levels where it will be impractical to compete.

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174 *See* § 4.6.3.7.

175 *See* § 4.6.4.4 and all subtending paragraphs.

176 *See* § 4.6.5.

Q. CONSIDERING THE LANGAUGE REFLECTED IN THE FILING OF APRIL 24TH HOW DOES THAT VERSION ESTABLISH VERIZON AS THE GATE KEEPER OF MTE ACCESS?

A. Verizon's language that AT&T considered in its filing of April 24th does not even address how on-premises wiring might be ordered. Care must be taken in this area to assure that an unnecessarily complex ordering process not be mandated for a relatively inexpensive element that is the only item required by AT&T to provide service in an MTE. For example, while the traditional LSR process could be employed, this approach has not been considered by OBF and, as a result, no resolution is likely for an extended period of time. And although the LSR process may be quite useful for such things as establishing directory listings, ordering customer specific UNEs, and porting numbers, it is "over built" for notifying the ILEC that a generally non-inventoried short pair of wires will be used at a particular premises (and even then the notification will not uniformly be required for all locations served). While the LSR might ordinarily trigger work by provisioning groups, update customer oriented information, update maintenance systems to permit necessary support or to initiate usage recording or particular switch features, none of this is required for intra-premises wiring. Effectively, the only requirement is that billing be initiated, and this only requires knowledge of quantity used, time period used and price, none of which requires a pair-by-pair submission of orders. AT&T believes the needs for billing can be met in a more efficient manner, such as by periodically delivering quantities used at a premises, rather than through an expensive and cumbersome pair-by-pair ordering approach.

Q. WHAT ELSE DOES VERIZON'S PROPOSED LANGUAGE OF APRIL 24TH COVER?

A. Very little, other than to delineate procedures for management and use of intra-premises facilities. It obligates AT&T to mark its facilities used.[177] Verizon is entirely silent on procedures to determine wiring ownership and procedures for deploying the SPOI. While Verizon does appropriately obligate itself to respond to AT&T trouble reports, it says little more beyond that except to identify conditions where Verizon may charge AT&T for false dispatches.[178]

Q. HOW DOES VERIZON'S LANGAUGE OF APRIL 24TH PERMIT VERIZON TO EXERT UNDUE CONTROL OVER ACTIVITIES AT THE MTE?

A. It mandates a joint site survey 15 calendar days in advance of first deployment of equipment without any limitation regarding the time by which the survey must be scheduled.[179] The only apparent justification for such a survey is to ensure that equipment placement does not encroach on the space of Verizon. While some accommodation may be appropriate, this can easily be accomplished by Verizon marking what space (within reason) is reserved rather than requiring a joint visit. Additionally, Verizon will allow a connecting terminal to be established but only if it is in the same room or no closer than 14" and no farther than 12' from the targeted Verizon terminal. The rationale for this limitation is completely unclear – and indeed there is none – as AT&T's choices in this area would only affect services provided by AT&T. Beyond that, the provision could become severely

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177 Verizon Proposed Interconnection Agreement at section 11.2.16.2(iv).

178 Id., section 11.2.16.7.

limiting if external enclosures or pedestals provide the means for accessing customer wiring. Finally, Verizon apparently believes that it is the only party with personnel competent to re-terminate wiring, even that which it does not control. Consequently it mandates that it perform that work.[180] Likewise it prohibits penetration of or passing through facilities and equipment of Verizon.[181] Such a prohibition may not seem unreasonable on the surface, at least where the building terminal is in a common room within a building – provided it does not serve to prevent a carrier from lifting building wiring and extending it to its own terminals. However, on the other hand, where external enclosures exist (such as pedestals and outside cross-connection boxes, which is a common occurrence for many MTEs), the restriction could be crippling. All access would then only be by Verizon's leave. Such a prohibition is contrary to the discussion of NID-to-NID connections found permissible in the First Report & Order.

Q. WHY DO YOU SAY THE PROHIBITION IS CONTRARY TO THE FIRST REPORT AND ORDER?

A. The FCC agreed, based on representations by Ameritech made in ex parte, that a NID-to-NID interconnection was not unreasonable. To that end, the FCC said "a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC's NID."[182] Of particular relevance here, the FCC said the "requesting carrier is entitled to connect its loops" which allows the competitor to

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179 Id., section 11.2.16.2(iii).

180 Id., section 11.2.16.4.

181 Id. section 11.2.16.2(iii).

do its own work rather than relying upon the ILEC. This language is explicitly incorporated into 51.319(b): "An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or any other technically feasible point."[183]

Q. DOES VERIZON'S LANGAUGE CONTAINED IN THE APRIL 24TH FILING CLEARLY STATE ITS OBLIGATIONS WITH RESPECT TO MTE ACCESS?

A. No. The only things that are made clear by that version of Verizon's language are those things that it will **not** do. For example, it will not negotiate on behalf of AT&T with the building owner for access to the building, common space or on-property Rights of Way.[184] It will not move its equipment to provide space for AT&T.[185] It will not permit equipment to be connected to intra-premises wiring that will interfere with other parties' provisioning of services.[186] It also prohibits use of spare capacity on existing Verizon terminals or placement of a terminal within a Verizon enclosure if space exists.[187] The Commission should therefore reject the entirety of Verizon's language reflected in Section 11.2.16 and all subtending paragraphs and, in its stead, adopt the entirety of AT&T's language reflected in Schedule 11.2.14 Section 4.6 and all subtending paragraphs.

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182 First Report & Order ¶ 392.

183 Id.

184 *See* section 11.2.16.3.

185 *See* id.

186 *See* section 11.2.16.6.

Q. HOW DOES THE VERSION OF THE LANGAUGE REWCIVED ON JULY 19TH DIFFER FROM THAT CONTAINED IN THE APRIL 24TH FILING?

A. The more recent version deletes all the preceding language that AT&T believed Verizon was proposing and reflects an edited version of what AT&T proposed as alternative language. The most notable of the edits is the elimination of AT&T's reference to Schedule 11.2.14 that contained all the operational detail related to MTE access. In effect the language now only states that Verizon does not currently have house and riser facilities but, if some should be acquired in the future, that it will provide access pursuant to mutually agreeable procedures. The current version, compared to the April 24th Version of the language that I characterized as vague, incomplete and in some cases anticompetitive, is totally void of any meaningful content. The language of proposed by AT&T should be adopted in the stead of either version of the Verizon language.

ISSUE III.10 How and under what conditions must Verizon implement Line Splitting and Line Sharing?

I. <u>Introduction.</u>

Q. WHAT IS THE PURPOSE OF THIS PORTION OF YOUR TESTIMONY?

A. The purpose of this portion of my testimony is to demonstrate that AT&T's proposed detailed contract provisions implement the Commission's line sharing and line splitting requirements in a lawful and pro-competitive manner and should be adopted instead of Verizon's vague language that would likely lead only to

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187 *See* section 11.2.16.2(iii).